IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

Crl.Rev.Pet.No. 828 of 1999

CRA.150/1994 of SESSIONS COURT, KOTTAYAM
CC.26/1989 of JUDL. MAGISTRATE OF FIRST CLASS-II(MOBILE), KOTTAYAM

.....

REVN. PETITIONER:

V.N. PONNAMMA, THERETTU HOUSE,
VELLOOR P.OO. PAMPADY PANCHAYATH
KOTTAYAM DIST.

BY ADV. SRI.MATHEW JOHN (K)

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
THE DIRECTOR GENERAL OF PUBLIC
POSECUTION, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR MR. AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/08/2007, ALONG WITH CRRP NO. 840 OF 1999 THE COURT ON 20-8-2007 PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.R.P.NOS. 828 & 840 OF 1999

DATED THIS THE 20TH DAY O AUGUST 2007

ORDER

Crl.R.P.No.840/1999 is filed by the first accused in C.C.No.26/1989/Crl.A.No.143/1994 and Crl.R.P.No.828/1999 is filed by the 2nd accused in C.C.No.26/1989/Crl.A.No.150/1994 with respect to the offences under Sections 2(ia) and 7(1)(iii) read with Section 16(1)(a)(i) of the P.F.A. Act 1954 (Central Act 37 of 1954 as amended by Act 34 of 1976) and read with Rule 5 appendix-B-item A.05.08.01 and Rule 50 of P.F.A. Rules 1955.

2. The prosecution case is that the Food Inspector on on 24-5-1988 at about 1.15 p.m. visited the grocery shop of the first accused and purchased five packets of 100 grams each of coriander powder manufactured by Priya Curry powder, Velloor. The same when analysed was found to be adulterated. A1, the dealer and A2 the manufacturer were charge sheeted.

3. The evidence adduced consisted of the testimony of Pws.1 to 6 and Exts.P1 to P20. The defence examined Dws.1 and

2 and Exts.D1 and D2. Ext.P13 Form-III report of the Public Analyst showed that the sample of coriander powder was adulterated as it contained 30% of wheat starch. The evidence of PW1, the Food Inspector and that of Pws.2 and 3, the witnesses to the seizure and exhibits produced established the fact that the Food Inspector has purchased the food articles kept for sale and sampled after complying with the statutory formalities. Pws.2 and 3 have testified in this regard apart from PW1. At the time of seizure, the shop keeper produced the bill for purchase from the firm owned by the 2nd accused and hence the proceedings were initiated against A1 as well as A2. The 1st accused was not having the P.F.A. licence also. It is the version of the accused that he is the owner of a petty shop. Dws.1 and 2 neighbouring shop owners have testified that A2 and her husband used to bring the commodities in an autorikshaw and supply the same to A1. Ext.D2 is the copy of the licence issued to A2 from Pampadi Panchayat wherein the alleged manufacturing unit is situated, but Exts.D2 copy of licence and P15, i.e. letter of the Executive Officer of the Pampadi Panchayat which was proved by

the Executive officer himself, i.e.PW6 would show that the licence to A2 was issued on 27-5-1988 for the year 1988-89 for the purpose of manufacturing Priya Curry Powder and the date of the alleged purchase is 24-5-1988. Hence, it was held that A2 was having licence only from the date of issuance, i.e. 27-5-1988 and hence on the date of the alleged sale to the Food Inspector, i.e. 24-5-1988, A2 was not having licence. As per Clause 3 of Ext.D2 licence will be in force for a period of one year from the beginning of the financial year 1988-89 or till the end of the financial year. If the licence is issued after the beginning of the financial year. I find that clause 3 is very clear that the validity of the licence will be only from the date on which it has been issued and till the end of the financial year as the licence was issued only on 27-5-1988, and the date of purchase is on 24-5-1988. A2 is not having licence to manufacture the curry powder. As per Section 19(2) the warrantee will be effective only if the purchase is from a licenced manufacturer. Hence, evidently both A1 as well as A2 are guilty of the offences alleged. I find that there is nothing to interfere in the conviction of the accused by

the courts below. The conviction is confirmed.

Counsel for the revision petitioners have pleaded for leniency pointing out that the incident is on 24-5-1988 and that more than 19 years have elapsed since the commencement of the proceedings. It is further stated that A1 is a petty trader and A2, a lady are aged persons. In the circumstances and considering the fact that for about two decades the accused/revision petitioners were facing the ordeal of criminal proceedings, the sentence is liable to be modified. In the above circumstances, the minimum sentence of imprisonment envisaged need not be imposed. Hence, the sentence is imposed on A1 and A2 is modified to imprisonment till the rising of the court and to pay a fine of Rs.5,000/- each and in default to undergo simple imprisonment for three months. The revision petitioners/accused shall appear before the Judicial Magistrate of First Class-II, Kottayam on 28-9-2007 to receive sentence. The Crl. revision petitions are disposed of accordingly.

ks. **K.R.UDAYABHANU, JUDGE**

K.R.UDAYABHANU, J

CRL.R.P.NOS.828 & 840 OF 1999

ORDER

27-6-2007